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OFFICE OF PETITIONS

In re Application of	:	
Eberhard J. Sauter	:	
Application No. 10/520,826	:	DECISION ON PETITION
Filed: July 11, 2005	:	
Attorney Docket No. 040668-US	:	

This is a decision on the petition to revive the above-identified application under 37 CFR 1.137(b), filed May 18, 2009.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is **not** a final agency decision within the meaning of 5 USC 704.

The above-identified application became abandoned for failure to timely pay the issue fee and submit a substitute oath or declaration in response to the Notice of Allowance and Notice of Allowability, both mailed on April 9, 2007. These notices set a statutory period for reply of three months. No extensions of time under 37 CFR 1.136(a) were available. No issue fee and substitute oath or declaration having been received, the application became abandoned on July 10, 2007. A Notice of Abandonment was mailed on August 8, 2007.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that

the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d).

The instant petition lacks item (1). Petitioner did not submit a substitute oath or declaration as required by the Notice of Allowability. Moreover, it is noted that the PTOL-85b Issue Fee Transmittal form submitted is for application No. 10/250,826, not application No. 10/520,826.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Further correspondence concerning this application should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571)272-3207.



Cliff Congo
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Office of Petitions